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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/673,710	03/07/2001	Sylvia Burssens	2364/100	3986

7590 09/25/2002

ANN R. POKALSKY, ESQ.  
DILWORTH & BARRESE  
333 EARLE OVINGTON BLVD.  
UNIONDALE, NY 11553

EXAMINER

COLLINS, CYNTHIA E

ART UNIT	PAPER NUMBER
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1638

DATE MAILED: 09/25/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/673,710

Applicant(s)

BURSSSENS ET AL.

Examiner

Cynthia Collins

Art Unit

1638

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 March 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-31 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other:

**DETAILED ACTION**

***Election/Restrictions***

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

**Group I**, claim(s) 1-14 and 16-31, drawn to a method for obtaining plants tolerant to abiotic stress conditions by introducing into a plant cell a CDK nucleic acid molecule that results in the presence of a CDK protein that is not susceptible to inhibitory phosphorylation.

**Group II**, claim(s) 1-11, 13 and 15-31, drawn to a method for obtaining plants tolerant to abiotic stress conditions by introducing into a plant cell a Wee-kinase nucleic acid molecule that results in the presence of a CDK protein that is not susceptible to inhibitory phosphorylation.

**Group III**, claim(s) 1-11, 13 and 15-31, drawn to a method for obtaining plants tolerant to abiotic stress conditions by introducing into a plant cell a MIK nucleic acid molecule that results in the presence of a CDK protein that is not susceptible to inhibitory phosphorylation.

**Group IV**, claim(s) 1-11, 13 and 15-31, drawn to a method for obtaining plants tolerant to abiotic stress conditions by introducing into a plant cell a MYT nucleic acid molecule

that results in the presence of a CDK protein that is not susceptible to inhibitory phosphorylation.

The inventions listed as Groups I-IV do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

The technical feature linking the inventions of Groups I-IV appears to be the introduction into a plant cell of a nucleic acid molecule that results in the presence of a CDK protein that is not susceptible to inhibitory phosphorylation. However, the introduction into a plant cell of a nucleic acid molecule that results in the presence of a CDK protein that is not susceptible to inhibitory phosphorylation is obvious or anticipated over Hemerly et al. (The EMBO Journal, Vol. 14, No. 16, pages 3925-3936, 1995, Applicant's Search Report), and therefore does not constitute a special technical feature as defined by PCT Rule 13.2, because it does not define a contribution over the prior art. Furthermore, the methods of Groups I-IV employ structurally and functionally distinct nucleic acids encoding structurally and functionally distinct polypeptides. While CDK, Wee-kinase MIK and MYT share a common activity, namely resulting in the presence of a CDK protein that is not susceptible to inhibitory phosphorylation, this common activity is not a special technical feature, as discussed *supra*. Additionally, CDK, Wee-kinase MIK and MYT do not share a common structure or significant structural element that is a contribution over the prior art, and thus CDK, Wee-kinase MIK and MYT do not constitute a special technical feature.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

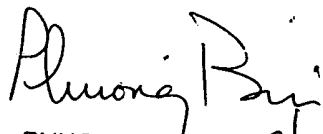
***Remarks***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cynthia Collins whose telephone number is (703) 605-1210. The examiner can normally be reached on Monday-Friday 8:45 AM -5:15 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amy Nelson can be reached on (703) 306-3218. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4242 for regular communications and (703) 308-4242 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

CC  
September 10, 2002

  
PHUONG T. BUI  
PRIMARY EXAMINER 9/23/02